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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 LINDA SANDERS, on behalf of
12 herself and all others similarly
situated,

13 Plaintiff,

14 v.

15 RBS CITIZENS, N.A.,

16 Defendant.
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18

Case No. 13-cv-3136-BAS-RBB

**ORDER GRANTING JOINT
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

19 On December 20, 2013, Plaintiff Linda Sanders (“Plaintiff”) commenced this
20 class action, alleging that Defendant RBS Citizens, N.A. had violated the Telephone
21 Consumer Protection Act, 47 U.S.C. §§ 227 et seq. (“TCPA”), by placing debt
22 collection calls using an automated telephone dialing system (“ATDS”) or a
23 prerecorded voice.¹

24 Now pending before the Court is the parties’ Joint Motion for Final Approval
25 of Class Action Settlement. (ECF No. 112.) The matter came on for hearing on
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27 ¹ Originally, Dorothy McQueen was also named as an individual plaintiff in the case. However,
28 on May 22, 2014, her individual claim was dismissed by joint motion of the parties. (ECF No. 21.)

January 23, 2017 at 10:30. The Court has considered the Settlement Agreement and Release attached to the Declaration of Douglas J. Campion in Support of Preliminary Approval (ECF No. 104-3) (“Settlement” or “Settlement Agreement”), the record in the above-entitled lawsuit (“the Action”) and the arguments and authorities of counsel. For the reasons stated below, the Court **GRANTS** this Motion. (ECF No. 112.)

I. PROPOSED SETTLEMENT

The proposed Settlement Agreement applies to class members (“Class” or “Class Members”) defined as:

All persons in the United States who received a call on their cellular telephones from [Defendant], or any third parties calling on a [Defendant] account, made with an alleged automatic telephone dialing system (“ATDS”) and/or an artificial or pre-recorded voice from December 20, 2009 through July 13, 2015 whose telephone numbers are identified in the Class List.

Excluded from the Settlement Class are [Defendant], its parent companies, affiliates or subsidiaries, or any entities in which such companies have a controlling interest; and any employees thereof; the judge or magistrate judge to whom the Action is assigned and any member of those judges' staffs and immediate families, and any persons who timely and validly request exclusion from the Settlement Class.

(Settlement at § 2.28.)²

The Settlement contemplates that Defendant “shall pay \$4,551,267.50 to settle the Action and obtain a full release from Settlement Class Members of all Released Claims.” (*Id.* at § 5.01.) “The amount paid per Approved Claim shall be divided among the approved claimants on a pro rata basis from the amount remaining in the Settlement Fund after payment of all Settlement Costs [including attorneys’ fees] from the Settlement Fund.” (*Id.* at § 5.02.) “Class Members shall

² All capitalized terms in this Order shall have the same meaning as set forth in the Settlement. (See Settlement at §§ 2.01-2.35 (Definitions).)

1 be entitled to submit a claim if their cellular phone number is on the Class List as a
 2 phone number that received a Telephone Call during the Class Period. Only one
 3 claim for each phone number called shall be permitted.” (*Id.* at § 5.03.) “As an
 4 additional benefit to all Class Members, [Defendant] has developed significant
 5 enhancements to its existing policies and procedures, as necessary, to require that if
 6 any person revokes his or her consent by any reasonable means, that person shall
 7 not receive any further calls from [Defendant] on his or her cellular telephone via an
 8 automatic telephone dialing system and/or an artificial or prerecorded voice.” (*Id.*
 9 at § 5.04.)

10 Following final court approval of the proposed Settlement, Plaintiff and
 11 Settlement Class Members shall be deemed to have released and discharged
 12 Defendant from any and all claims that were alleged in the complaint or claims that
 13 could have been asserted arising out of facts alleged in the complaint that took place
 14 during the class period. (*Id.* at § 16.01.)

15 **II. ANALYSIS**

16 The Ninth Circuit maintains a “strong judicial policy” that favors the
 17 settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
 18 (9th Cir. 1992). However, Federal Rule of Civil Procedure 23(e) first “require[s] the
 19 district court to determine whether a proposed settlement is fundamentally fair,
 20 adequate, and reasonable.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458
 21 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
 22 1998)). Where the “parties reach a settlement agreement prior to class certification,
 23 courts must peruse the proposed compromise to ratify both the propriety of the
 24 certification and the fairness of the settlement.” *Stanton v. Boeing Co.*, 327 F.3d
 25 938, 952 (9th Cir. 2003). In these situations, settlement approval “requires a higher
 26 standard of fairness and a more probing inquiry than may normally be required
 27 under Rule 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012)
 28 (internal quotation marks omitted). Before granting approval of a class-action

1 settlement, the Court must first determine whether the proposed class can be
2 certified. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (indicating
3 that a district court must apply “undiluted, even heightened, attention [to class
4 certification] in the settlement context” in order to protect absentees). For the
5 reasons outlined in the Court’s Order Granting Joint Motion for Preliminary
6 Approval of Class Action Settlement (ECF No. 107), the Court concludes that class
7 certification under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure is
8 appropriate in this case.

9 The Court further finds that the Proposed Settlement is “fair, adequate and
10 reasonable” under Rule 23(e) of the Federal Rules of Civil Procedure. “It is the
11 settlement taken as a whole, rather than the individual component parts, that must
12 be examined for overall fairness.” *Hanlon*, 150 F.3d at 1026. A court may not
13 “delete, modify or substitute certain provisions” of the settlement; rather, “[t]he
14 settlement must stand or fall in its entirety.” *Id.*

15 “[S]ettlement approval that takes place prior to formal class certification
16 requires a higher standard of fairness.” *Hanlon*, 150 F.3d at 1026. Consequently, a
17 district court “must be particularly vigilant not only for explicit collusion, but also
18 for more subtle signs that class counsel have allowed pursuit of their own self-
19 interests and that of certain class members to infect the negotiations.” *In re*
20 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). Other
21 relevant factors to this determination include, among others, “the strength of the
22 plaintiffs’ case; the risk, expense, complexity, and likely duration of further
23 litigation; the risk of maintaining class-action status throughout the trial; the amount
24 offered in settlement; the extent of discovery completed and the stage of the
25 proceedings; the experience and views of counsel; the presence of a governmental
26 participant; and the reaction of the class members to the proposed settlement.”
27 *Hanlon*, 150 F.3d at 1026; *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d
28 566, 575 (9th Cir. 2004). Here, as outlined in the Court’s Order Granting

1 Preliminary Approval of the Class Action Settlement (ECF No. 107), the parties’
 2 Joint Settlement Agreement complies with all of these requirements.

3 The Court previously approved the form and manner of Notice to the class
 4 members. (ECF No. 107.) The Court now finds the Class Notice program was
 5 executed as previously detailed in its Order. (Declaration of Steven J. Powell on
 6 Behalf of Claims Administrator Kurtzman Carlson Consultants (“KCC”), (ECF No.
 7 112-4) (“Powell Decl.”) ¶¶ 2-9.) KCC sent 1,148,513 post cards with notice of the
 8 Class Settlement to 971,000 class members, published notice in two national
 9 publications, and maintained a website for notice, which received 44,448 visitors.
 10 (*Id.*) Hence, the Court finds the class notice satisfies due process.

11 The Court previously found that the strength of Plaintiff’s case and the risk of
 12 further litigation, the amount of the proposed settlement versus the possible
 13 statutory damages if the case was successful after a trial, the extent of discovery and
 14 stage of the proceedings, and the experience and views of counsel all weighed in
 15 favor of approval of the Settlement Agreement (ECF No. 107.) The Court adopts
 16 its previous findings in the Preliminary Settlement Order. In addition, the Court
 17 now has the benefit of the reaction of Class Members to the Settlement. The
 18 Settlement Administrator has received 41,307 claims (including 33 late claims
 19 which, at the request of counsel, the Court will include in the Settlement Class)
 20 from Class Members. (Powell Decl. ¶¶ 14-15.) The Settlement Administrator
 21 received no objections to the settlement from Class Members and received only 33
 22 requests for exclusion. (Powell Decl. ¶¶ 16-17.) Therefore, the reaction of Class
 23 Members to the Settlement also supports approval.

24 **III. CONCLUSION**

25 For the reasons stated both in this Order as well as its previous Order
 26 Granting Preliminary Approval of the Class Action Settlement, the Court **GRANTS**
 27 the parties’ Joint Motion for Final Approval of Class Action Settlement. (ECF No.
 28 112.)

1 Accordingly, the Court **ORDERS** as follows:

- 2 1. The Judgment incorporates by reference the definitions in the Settlement,
3 including its exhibits, and all terms used herein shall have the same
4 meanings as set forth in the Settlement;
- 5 2. The Court has jurisdiction over the subject matter of this Action and all
6 Parties to the Action, including all Settlement Class members;
- 7 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
8 certifies the following Class for settlement purposes:

9 All persons in the United States who received a call on their cellular
10 telephones from [Defendant], or any third parties calling on a
11 [Defendant] account, made with an alleged automatic telephone dialing
12 system ("ATDS") and/or an artificial or pre-recorded voice from
13 December 20, 2009 through July 13, 2015 whose telephone numbers
are identified in the Class List.

14 Excluded from the Settlement Class are [Defendant], its parent
15 companies, affiliates or subsidiaries, or any entities in which such
16 companies have a controlling interest; and any employees thereof; the
17 judge or magistrate judge to whom the Action is assigned and any
18 member of those judges' staffs and immediate families, and any persons
who timely and validly request exclusion from the Settlement Class.

- 19 4. Pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, all such
20 persons who satisfy the Class definition above, except those Class
21 Members who timely and validly excluded themselves from the
22 Settlement Class, are Settlement Class Members bound by this Judgment;
- 23 5. Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, the Court
24 finds that the named plaintiff in this Action, Linda Sanders, is a member
25 of the Settlement Class, her claims are typical of the Settlement Class, and
26 she fairly and adequately protected the interests of the Settlement Class
27 throughout the Proceedings in the Action. Accordingly, the Court
28 appoints Linda Sanders as Class Representative;

- 1 6. The Court finds that the Settlement Class meets all requirements of Rule
2 23(a) and (b)(3) of the Federal Rules of Civil Procedure for certification
3 of the class claims alleged in the Complaint, including: (a) numerosity; (b)
4 commonality; (c) typicality; (d) adequacy of the Class Representative and
5 Class Counsel; (e) predominance of common questions of fact and law
6 among the Class; and (f) superiority;
- 7 7. Having considered the factors set forth in Rule 23(g)(1) of the Federal
8 Rules of Civil Procedure, the Court finds that Class Counsel have fairly
9 and adequately represented the Class for purposes of entering into and
10 implementing the Settlement, and, thus, continues to appoint Douglas J.
11 Campion of the Law Offices of Douglas J. Champion, APS and Ronald A.
12 Marron, Alexis M. Wood and Kas L. Gallucci of the Law Offices of
13 Ronald A. Marron as Class Counsel for the Settlement Class;
- 14 8. In accordance with the Court's Preliminary Approval Order and the
15 Court-approved notice program, the Claims Administrator caused the
16 Class Notice to be disseminated as ordered. The Class Notice advised
17 Class Members of the terms of the Settlement, of the Final Approval
18 Hearing, and their right to appear at such hearing, of their rights to remain
19 in or opt out of the Settlement Class and to object to the Settlement,
20 procedures for exercising such rights, and the binding effect of this
21 Judgment to the Settlement Class;
- 22 9. The distribution of the Class Notice constituted the best notice practicable
23 under the circumstances, and fully satisfies the requirements of Rule 23 of
24 the Federal Rules of Civil Procedure, the requirements of due process, 28
25 U.S.C. §1714, and any other applicable law;
- 26 10. The Settlement proposed by the parties is fair, reasonable and adequate.
27 The terms and provisions of the Settlement are the product of lengthy,
28 arms-length negotiations conducted in good faith and with the assistance

1 of the Honorable Edward A. Infante (Ret.). Approval of the Settlement
2 will result in substantial savings of time, money and effort to the Court
3 and the parties, and will further the interests of justice;

4 11. Thirty-three Class Members have timely or validly submitted requests
5 for exclusion from the class. Therefore, all Settlement Class Members,
6 except for these thirty-three members, are bound by this Judgment and by
7 the terms of the Settlement;

8 12. The Court awards attorney's fees, costs and an incentive service award to
9 Linda Sanders and Class Counsel as set forth in the Court Order submitted
10 simultaneously with this Order;


11 13. The Court **DISMISSES WITH PREJUDICE** the Action and all released
12 claims set forth in Sections 13, 14 and 16 of the Settlement Agreement;

13 14. Without affecting the finality of this Judgment, the Court reserves
14 jurisdiction over the implementation, administration and enforcement of
15 this Judgment and the Settlement;

16 15. There is no just reason for delay in the entry of this Final Judgment and
17 Order approving Settlement and immediate entry by the Clerk of the Court
18 is expressly directly pursuant to Rule 54(b) of the Federal Rules of Civil
19 Procedure.

20 **IT IS SO ORDERED.**

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22 **DATED: January 27, 2017**

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25 **Hon. Cynthia Bashant**
26 **United States District Judge**
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